
(2013) 01 DEL CK 0124

In the Delhi High Court

Case No : Writ Petition (C) 67 of 2013 and C.M. No's. 131-132 of 2013

Guru Nanak Public School

APPELLANT

Vs

Arjun

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 1 AD 773 : (2013) 199 DLT 54 : (2013) 138 FLR 673 : (2013) LLR 280

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Anil Sapra with Mr. Rakesh Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner assails the award dated 21.05.2012 passed by the Presiding Officer, Labour Court XI, Karkardooma Court, Delhi bearing Computer ID No. 02402C0053722010. The respondent filed a direct industrial dispute before the Labour Court u/s 10(4A) of the Industrial Disputes Act (ID Act) against the petitioner, namely, Guru Nanak Public School through its Chairman as well as through its Principal. The case of the respondent was that he was appointed by the management of the school on the post of Sweeper on 09.10.1992 and that he had been working since then. On 29.09.2009, the respondents' services were terminated by the management without any reason. Consequently, he filed the aforesaid petition and sought reinstatement of service with full back wages and other consequential benefits. The petitioner filed its written statement in response. The first two preliminary objections, which are relied upon learned counsel for the petitioner in his submission, read as follows:

1. That the present statement of claim is not maintainable as the respondent is not industry as defined under the Industrial Dispute Act. That the respondent is not covered under the provision of Industrial Dispute Act.
2. That there is no "Industrial Dispute" in existence between the parties as per

the provisions of the Industrial Disputes Act, and hence the present matter on the basis of the presumption of the existence of an industrial dispute between the parties is null and void ab initio and is liable to be quashed.

2. The petitioner claimed that there were some allegations of theft against the respondent. It was their case that the respondents services were not terminated, rather he had himself started absenting from duties. On the basis of the pleadings on 25.03.2012, the following issues were framed:

1. Whether the workman had abandoned his duties, if yes, from what date and period? OPM

2. Whether the services of the workman were terminated illegally and/or unjustifiably by the Management? OPW.

3. Relief.

3. The respondent examined himself as WW1 by filing his evidence affidavit Ex. WW1/A reiterating his claim. He tendered seven documents in evidence which were marked as Ex. WW1/1 to Ex. WW1/7. These were his identity card (WW1/1), photocopy of PF subscription for the year 1999-2000 (WW1/2), photocopy of a letter written by him to the Principal of the management school (WW1/3), postal receipt (WW1/4), legal demand notice (WW1/5), receipt (WW1/6) and AD card (WW1/7).

4. The respondent examined himself in chief on 14.02.2012 and thereafter the matter was listed for his cross examination by the petitioner management. However, the management did not appear for cross examination. Costs were imposed and last opportunity was granted, but the petitioner failed to comply with the order. Neither the costs were paid nor the respondent was cross examined despite last opportunity. The respondents evidence was closed and an opportunity was granted to the petitioner to lead evidence. However, once again the petitioner failed to lead any evidence despite repeated opportunities.

5. In view of the aforesaid position, the Labour Court held that the petitioner had failed to establish that the respondent/workman had abandoned his duties. It also held that the services of the respondent were illegally terminated as they proceeded without any enquiry.

6. The only submission made by Mr. Sapra, learned senior counsel for the petitioner/management is that the Labour Court did not have the jurisdiction to deal with the respondents claim. He submits that the petitioner school is governed by the provisions of Delhi School Education Act. The petitioner falls within the definition of "employee" defined u/s 2(h) of the Delhi School Education Act, which means a teacher and includes every other employee working in a recognized school. He further submits that u/s 8(3), any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the tribunal

constituted u/s 11. It is, therefore, argued that the jurisdiction of the courts constituted under the ID Act is excluded.

7. The submission of Mr. Sapra is that even though the petitioner did not appear before the Labour Court to make the aforesaid submission, since in the written statement the aforesaid preliminary objection to the jurisdiction of the Labour Court had been raised, the same ought to have been dealt with by the said Court.

8. Having heard Mr. Sapra, I am of the view that there is no merit in the aforesaid submission. Firstly, I may note that the objection to the jurisdiction to the tribunal was not founded upon the provisions of the Delhi School Education Act. It was on the basis that the petitioner is not an industry as defined under the ID Act. Secondly, the petitioner did not even represent itself to urge the said preliminary objection. It is well known that in pleadings, parties raise various legal and other objections and submissions. However, it is not that all of them are pressed or urged when the matter is considered by the concerned Court. Since the petitioner did not appear before the Court to urge any objection, it was not incumbent upon the Labour Court to have, on its own, decided the said objection.

9. Mr. Sapra has also sought to place reliance on the decision of this Court in *Jitender Kumar Vs. Director of Education and Others*, . It was a case of a driver who claimed to have been appointed by the respondent school. There was a dispute as to whether he was an employee of the school or the education society which was running the school. The Court in para 3 of the decision observed as follows:

3. Admittedly, there is no document filed by the petitioner on the basis of which he could claim that he was the employee of the respondent school. In fact petitioner has annexed Annexure-B as per which bus No. DL IP 6003/DL IPA 1803 which he was driving belongs to Patel Education Society. Whether the petitioner was the employee of the society or the school would be a disputed question of fact which can be decided only after taking evidence. If the petitioner was the employee of the society, he was not governed by the Delhi School Education Act and Rules and in such a case his remedy would be to raise industrial dispute which is alternate efficacious remedy. Even if the claim of the petitioner is accepted that he was the employee of the school then also his remedy is to file appeal against the termination before the Delhi School Tribunal u/s 8 of the Delhi School Education Act as it is contended that termination is by way of punishment. In either case writ petition is not maintainable and therefore the same is accordingly dismissed with liberty to the petitioner to seek remedy before the appropriate forum provided under the law.

10. Mr. Sapra thus submits that since the respondent was covered by the Delhi School Education Act and the Rules made thereunder, he could have been relegated to the remedy under the said Act, and he could not have invoked the ID Act to seek redressal.

11. I do not find any merit in this submission as well. It has not been pointed out by reference to the Delhi Education Act, or the ID Act, that the remedy available to the respondent under the ID Act was excluded by virtue of the enactment of Delhi School Education Act. The only provision pointed out is section 25 of the Delhi School Education Act, which excludes the jurisdiction of the civil court in respect of matters in relation to which the authorities under the said Act are empowered to act. The Courts/tribunals established under the I.D. Act are not Civil Courts. In the aforesaid decision the Court was not considering the issue: Whether the existence of a remedy under the Delhi School Education Act would bar the remedy under the I.D. Act, or not.

12. To me, it appears that the remedies available to the respondent were concurrent. Exclusion of jurisdiction of the Courts/tribunals under the I.D. Act cannot lightly be inferred. Neither the said bar/exclusion is express nor implied. The respondent could have elected to invoke its remedy under the Delhi School Education Act, or could have elected to invoke the remedy under the ID Act. Since he had made his election to invoke the remedy under the ID Act, he cannot be denied the relief thereunder only because he could have also sought his remedy under the Delhi School Education Act.

13. For the aforesaid reasons, I find no merit in this petition. Dismissed.